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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,109	09/18/2002	Kenneth G. Faulkner	390086.95304	8205

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QUARLES & BRADY LLP
411 E. WISCONSIN AVENUE
SUITE 2040
MILWAUKEE, WI 53202-4497

EXAMINER

ROBINSON, DANIEL LEON

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/065,109

Applicant(s)

FAULKNER ET AL.

Examiner

Daniel I. Robinson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2-19-2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohtomo et al.(tomoU.S.Pat.5,348,009) in view of Arnold et al.(U.S.Pat.4,922,915). Ohtomo discloses a bone assessment apparatus that shows many of the features of the claimed invention but fails to explicitly show as system whereby a faulty acquisition is determined by foreign objects. Arnold discloses an automated image and localization method that shows an automatic analysis to exclude components that are undesirable. It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use the histogram analysis as taught by Arnold in the device of Ohtomo so as to isolate tissue in an automated manner.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Ohtomo as applied to claims 1-2 above, and further in view of Nowak(U.S.Pat.4,858,128). The modified Ohtomo reference does not explicitly show faulty acquisition caused by motion. Nowak discloses a view-to-view image correction for object motion that shows a correlation technique that accounts for patient motion. It would have been obvious to one of ordinary skill at the time of the claimed invention to use motion detection as taught by Nowak with the modified device of Ohtomo to remove detected motion.

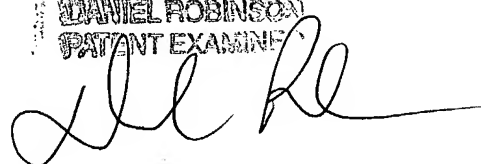
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Claims 6-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Ohtomo reference as applied to claims 3-5 above, and further in view of Mazess et al. (U.S. Pat. 6,160,866). The modified Ohtomo reference does not show detection of and calculation of mispositioning. Mazess discloses an apparatus for bilateral femur measurement that shows locating a femur based on a stored information regarding another femur. It would be obvious to one of ordinary skill in the art at the time of the claimed invention to use locating feature of Mazess with the modified Ohtomo reference to reduce imaging time.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mazess'210, Loo, and Bisek are cited to show structure and methods similar to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel I. Robinson whose telephone number is 703 306-9043. The examiner can normally be reached on M-F 5:30am-2:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

DANIEL ROBINSON
PATENT EXAMINER


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dlr

DANIEL F. COLEMAN
PATENT EXAMINER
